IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 37 of 2007
With
COMPANY PETITION No. 38 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GSPC GAS COMPANY LTD. - Petitioner(s)
Versus
. . - Respondent(s)

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Appearance :
MRS SWATI SOPARKAR for Petitioner(s) : 1,
MR HARIN P RAVAL for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 11/04/2007

ORAL JUDGMENT

1. Both these petitions are filed by the respective petitioner – Companies for sanctioning scheme of arrangement in the nature of De-merger and Transfer of Retail Gas Business of Gujarat State Petroleum

Corporation Limited (the Demerged Company) to G.S.P.C. Gas Company Limited (the Resulting Company) under Section 391 read with Section 394 of the Companies Act, 1956.

2. It is submitted on behalf of both the respective companies that the Gujarat State Petroleum Corporation Limited ("G.S.P.C." for short) is a nodal agency of Government of Gujarat in oil and gas sector. That the G.S.P.C. is mainly engaged in exploration and production of oil and gas. The Company has focused its attention on acquiring oil and gas acreages. It is further submitted that the Company is at present participating interest in oil and gas blocks located in India and is operator in 6 Blocks. It is also submitted that the Company has also acquired blocks in Australia and Egypt. That the Company is actively involved in trading of R-LNG in the State of Gujarat. It is also further submitted that the Company being nodal agency of State Government, has developed pilot project on Compressed Natural Gas (CNG) and Piped Natural Gas (PNG) to promote use of gas in vehicle segment and domestic segment. It is submitted that the Company has turnover of Rs. 1766.64 Crores and net profit (after tax) of Rs. 281.39 Crores during the financial year ended on 31st March, 2006. It is also submitted that the Company has promoted GSPC Gas Company Limited (erstwhile Gujarat State Fuel Management Company Limited) for retail gas business in the State of Gujarat.

It is also further submitted that G.S.P.C. Gas Company Limited ("G.S.P.C. Gas" for short), the Resulting Company was originally incorporated as Gujarat State Fuel Management Company Limited for providing fuel advisory services. It is also submitted that the Company has acquired good knowledge about the gas sector by providing advisory services on commercial and legal aspects related to gas contracts. It is

also submitted that the company has initiated work for developing City Gas Distribution Network in 20 cities in the State of Gujarat and the Company also entered into tie up with IOC for developing CNG Stations. It is the case on behalf of the petitioner that since the Company was focusing on development of City Gas Distribution Network in the State of Gujarat, it was thought fit to acquire existing Retail Gas Business of GSPC, the de-merged Company. It is also submitted that though GSPC Gas is a loss making Company, at present it is anticipated that because of acquiring the operational CNG PNG business, it shall be in a position to generate substantial revenue.

3. It is submitted that thus both these petitioner-Companies are promoted by the Government of Gujarat and both Companies are closely held, unlisted public limited companies. It is submitted that de-merger is proposed to segregate the exploration and distribution activities in the fields of Oil and Gas. It is further submitted that this will enable the parent Company to focus on its core business of exploration and production of oil and gas. In order to achieve the sustained growth and development of both the companies, it is necessary that the future growth strategies are devised separately. The petitions give details of the advantages that would flow by virtue of the proposed arrangement between these companies.

4. *Vide* order dated 19th December, 2002 passed in Company Application No. 658 of 2006, separate meetings of the Equity and Unsecured Creditors of the De-merged Company were directed to be convened. (there being no Secured Creditors of the de-merged company). The Equity Shareholders and Unsecured Creditors of the De-merged Company have unanimously approved the scheme in the meetings duly convened on 31st January, 2007 for the purpose as per the

directions issued vide order dated 19th December, 2006.

5. *Vide* order dated 19th December, 2006 passed in Company Application No. 659 of 2006, the meeting of the Equity Shareholders of the Resulting Company was directed to be convened. The Equity Shareholders of the Resulting Company have unanimously approved the scheme in the meeting duly convened on 31st January, 2007 for the purpose as per the directions issued vide order dated 19th December, 2006.

6. Present petitions were filed for the sanction of the proposed scheme by this Court after obtaining the requisite approvals at the meetings. After the petitions were admitted, the same were duly advertised in the newspapers ("Indian Express" and "Sandesh" Ahmedabad editions dated 25th February, 2007) and the publication in the Government Gazette was dispensed with as directed in the order dated 12th February, 2007. The affidavits filed on 28th February, 2007 confirm the same. No one has come forward with any objections to the said petitions even after the publication.

7. Notice of the petitions have been served upon the Central Government and Shri Harin P.Raval, the Standing Counsel appear for the Central Government. Shri Raval, has placed on record the affidavit dated 23rd March, 2007 filed by the Asst. Registrar of Companies along with the letter from the Regional Director dated 23rd March, 2007. It is submitted that the Regional Director has no objection to the proposed scheme subject to applicability of Section 396. It is contended that since the share capital of the Petitioner Companies is held by Government of Gujarat and other State Government Body Corporates, the scheme of arrangement, being the one between Government Companies, provisions

of Section 396 are applicable.

8. Smt. Swati Soporkar, learned Advocate appearing on behalf of the petitioner – Companies has submitted that in the present case when the petitioner companies have complied with and followed the procedure as required under Sections 391 to 394 of the Companies Act, 1956, Section 396 will not be attracted. It is submitted that Section 396 is an independent section and it is not dependent upon Section 394 of the Companies Act, 1956. It is also submitted by her that on plain reading of Section 396, it is clear that the said section empowers the Central Government to amalgamate the companies even without following the provisions of Section 394 under special circumstances. It does not prohibit the Government companies to enter into the arrangement under Section 391 to 394 of the Companies Act, 1956. Therefore, it is requested to allow both the Company Petitions.

9. Heard learned Advocates appearing on behalf of the respective parties.

10. The only objection raised on behalf of the Central Government – Regional Director is with regard to applicability of Section 396 of the Companies Act, 1956.

Section 396 of the Companies Act, 1956 reads as under:

"Power of Central Government to provide for amalgamation of companies in national interest.

396(1) Where the Central Government is satisfied that it is essential in the [public interest] that two or more companies should amalgamate, then, notwithstanding anything contained in sections

394 and 395 but subject to the provisions of this section, the Central Government may, by order notified in the Official Gazette, provide for the amalgamation of those companies into a single company with such constitution; with such property, powers, rights, interests, authorities and privileges; and with such liabilities, duties and obligations; as may be specified in the order.

(2) The order aforesaid may [provide for the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company and may also] contain such consequential, incidental and supplemental provisions as may, in the opinion of the Central Government, be necessary to give effect to the amalgamation.

(3) Every member or creditor (including a debenture holder) of each of the companies before the amalgamation shall have, as nearly as may be, the same interest in or rights against the company resulting from the amalgamation as he had in the company of which he was originally a member or creditor; and to the extent to which the interest or rights of such member or creditor in or against the company resulting from the amalgamation are less than his interest in or rights against the original company, he shall be entitled to compensation which shall be assessed by such authority as may be prescribed [and every such assessment shall be published in the Official Gazette.] The compensation so assessed shall be paid to the member or creditor concerned by the company resulting from the amalgamation.

[(3A) Any person aggrieved by any assessment of compensation made by the prescribed authority under sub-section (3) may, within thirty days from the date of publication of such assessment in the Official Gazette, prefer an appeal to the Company Law Board and

thereupon the assessment of the compensation shall be made by the Company Law Board]

(4) No order shall be made under this section, unless-

(a) a copy of the proposed order has been sent in draft to each of the companies concerned.

[(aa) the time for preferring an appeal under sub-section (3A) has expired, or where any such appeal has been preferred, the appeal has been finally disposed of; and]

(b) the Central Government has considered, and made such modification, if any, in the draft order as may seem to it desirable in the light of any suggestions and objections which may be received by it from any such company within such period as the Central Government may fix in that behalf, not being less than two months from the date on which the copy aforesaid is received by that company, or from any class of shareholders therein, or from any creditors or any class of creditors thereof.

(5) Copies of every order made under this section shall, as soon as may be after it has been made, be laid before both Houses of Parliament."

11. On considering the provisions of Section 396 of the Companies Act, 1956, it gives powers to the Central Government to provide for amalgamation of Companies in national interest. Sub-section (1) of Section 396 provides, that where the Central Government is satisfied that it is essential in the public interest that two or more Companies are amalgamate, notwithstanding anything contained in Section 394 and 395 which are subject to the provisions of Section 396, the Central Government by order notified in the Official Gazette, provide for amalgamation of those companies into single Company with such constitution; with such property,powers, rights, interests authorities and

privileges; and with such liabilities, duties and obligations; as may be specified in the order. Thus, considering the said provision, independent power is given to the Central Government to provide for amalgamation of companies in national interest. It empowers the Central Government to amalgamate the companies even without following the provisions of Section 394 if same is found to be in the public interest. It does not prohibit the Government Company to enter into the arrangement under Section 391 and 394 of the Companies Act, 1956. On plain reading of Section 396 of the Companies Act, 1956, it cannot be said that when two Government Companies propose a scheme of arrangement under Section 391 to 394 and after following due procedure as required under the said provisions, same cannot be done. The power of the Court to sanction a scheme of arrangement of Government companies under Section 391 to 394 of the Companies Act, does not depend upon, the exercise of such power by the Central Government under Section 396 of the Companies Act, 1956. Thus, the objection raised by the Regional Director – Central Government are not sustainable and are required to be over ruled and are hereby over ruled.

12. Having gone through the proposed scheme of arrangement and the averments in the Company Petitions, it appears that it has been decided to transfer Retail Gas Business of G.S.P.C. to G.S.P.C. Gas, so as to enable the parent Company to focus on its core business of exploration and production of oil and gas, more particularly, when the G.S.P.C. - (De-merged Company) is expanding its business outside India. It is submitted that in order to achieve the sustained growth and development of both the companies, it is necessary that the future growth strategies are devised separately. It is submitted that the transfer of the retail gas distribution activities shall prove to be beneficial to G.S.P.C. Gas as this will be substantially revenue generating activity.

The Equity Shareholders and Unsecured Creditors of the De-merged Company have unanimously approved the scheme. Even the equity shareholders of the Resulting Company have also unanimously approved the scheme. After the petitions were admitted, same were duly advertised in the local newspapers (Indian Express and Sandesh Ahmedabad edition dated 25th February, 2007) and no one has come forward with any objections to the said petitions ever after the publication.

13. Considering above, it appears to the Court that the proposed scheme of de-merger would be in the interest of both the Companies and same is not in any way against the public interest. The objection raised by the Regional Director is dealt with hereinabove and are over ruled. Under the circumstances, there is no impediment in sanctioning the proposed scheme of arrangement in the nature of de-merger.

14. For the reasons stated above, prayers in terms of Paragraph No. 20(a) in Company Petition No. 37 of 2007 and prayer in terms of Paragraph No. 21(a) in Company Petition No. 38 of 2007, are hereby granted. Both the petitions are accordingly disposed of. So far as the costs to be paid to the Central Standing Counsel is concerned, the same is quantified at Rs.3500/- (Rupees Three Thousand Five Hundred only) per petition. The same may be paid to Shri Harin P. Raval, learned Advocate by the respective petitioners.

[M.R.Shah, J.]

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